

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 5533 OF 2004

JUGALKISHORE SAKALCHAND

SONMAL & ORS.

.. PETITIONERS

vs

CHANDRAKANT HIRACHAND & ORS. .. RESPONDENTS

Mr. Navin Parikh i/b Tushar Goradia & Kalwan Zaiwalla for petitioners

Mr. Pramesh I. Vakil for R-1 to 3.

CORAM:-SMT. RANJANA DESAI, J.

DATED:-17-1-2005

P.C.

Petitioners 1 to 8 are the heirs and legal representatives of original defendants 2 and 3. Petitioner 9 is original defendant 1. The suit was filed by the respondents, trustees of the trust 'Seth Hirachand Fulchand Trust' for eviction of the petitioners on the ground of arrears of rent. The trial court

decreed the suit, however, appellate court dismissed the appeal and hence this petition.

2. I have heard at some length the learned counsel appearing for the petitioners. The learned counsel contended that the judgments of the courts below suffer from a patent illegality because they have failed to appreciate that the suit notice was not served on defendant 2. He submitted that by letter dated 10th May, 1979, defendant 2 had intimated to the landlord that defendant 3 has no concern with the firm and hence no rent should be accepted from him. According to the learned counsel this letter indicates that defendant 2 was always ready and willing to pay the rent. The suit came to be filed on 21.3.80 and defendant 2 did pay the arrears on 4-7-80. He submitted that therefore, the impugned judgments deserve to be set aside.

3. These submissions do not impress me. It is a fact that since beginning the suit premises were taken by defendants 2 and 3 jointly in the name of defendant 1 firm. There was no evidence produced before the courts below to indicate that the partnership firm was dissolved. The courts below are right in observing that in such circumstances the service of notice on one of the partners will be service on the partnership firm and the other partner. The suit notice was served on 26.3.80 and therefore, the defendants were required to pay the arrears on or before 25-4-80.

Therefore, assuming defendant 2 paid arrears on 4-7-80, that does not help the defendants. The finding of fact on the question of arrears is unassailable.

4. There is no substance in this petition. It is rejected.

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